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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,619	04/07/2005	Michael Peszynski	USO20387	6981
24737 7590 10/15/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
NIA, ALIREZA				
ART UNIT		PAPER NUMBER		
3730				
MAIL DATE		DELIVERY MODE		
10/15/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/530,619

**Applicant(s)**

PESZYNSKI, MICHAEL

**Examiner**

ALIREZA NIA

**Art Unit**

3739

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-10 and 12-22.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

/Linda C Dvorak/  
Supervisory Patent Examiner, Art Unit 3739

/A. N./  
Examiner, Art Unit 3739  
Alireza Nia-October 2<sup>nd</sup>, 2008

Continuation of 13. Other: Applicant's arguments filed September 24th, 2008 have been fully considered but they are not persuasive. The Examiner disagrees with Applicant's arguments that "Applicant respectfully submits that the holding of Finality is improper, and respectfully requests that it be withdrawn, for at least the following reasons. M.P.E.P. § 706.07(a) states that "a final rejection is improper where there is another new ground of rejection introduced by the examiner which was not necessitated by amendment to the claims. "Here, the Final Office Action rejects claim 1 using a new ground of rejection introduced by the examiner which was not necessitated by amendment to the claim. In response to the first Office Action, Applicant amended claim 1 to include the ball bearings of originally-filed claim 11, and then canceled claim 11. The originally-filed claim 11 was rejected in the first Office Action under 35 U.S.C. § 103 over van der Heide U.S. Patent 5,388,568 ("van der Heide") in view of Hall U.S. Patent 3,788,303 ("Hall")." In the original claims filed April 7th, 2005, claim 11 recited "The control mechanism of claim 1, further comprising ball bearings arranged between said second pinion shaft and said intermediate shaft for enabling rotation of said second pinion shaft relative to said intermediate shaft and between said intermediate shaft and said first pinion shaft for enabling rotation of said first pinion shaft relative to said intermediate shaft." In the amendment filed on March 27th, 2008, claim 11 was cancelled and claim 1 recited " (Currently Amended) Control mechanism for an endoscope having a flexible shaft, comprising: a frame; first and second movement transmission devices for causing adjustment of a distal end of the flexible shaft; a first control knob; a first rotatable pinion shaft rotatably mounted on said frame and fixed to said first control knob, said first pinion shaft engaging with said first movement transmission device such that upon rotation of said first control knob, said first pinion shaft rotates and said first movement transmission device is actuated; a second control knob rotatable independent of said first control knob; a second rotatable pinion shaft fixed to said second control knob and coaxial with said first pinion shaft, said second pinion shaft engaging with said second movement transmission device such that upon rotation of said second control knob, said second pinion shaft rotates and said second movement transmission device is actuated; an intermediate shaft arranged at least partially inside of said second pinion shaft and at least partially around said first pinion shaft, said intermediate shaft being arranged to reduce transmission of torque between said first and second pinion shafts such that rotation of one of said first and second pinion shafts does not cause rotation of the other of said first and second pinion shafts, said intermediate shaft being axially unrestrained such that movement of said intermediate shaft in an axial direction is possible; first ball bearings arranged between said intermediate shaft and one of said first and second pinion shafts for enabling rotation of said one of said first and second pinion shafts relative to said intermediate shaft." The amended claim 1 included claim language and limitations that recited "first ball bearings arranged between said intermediate shaft and one of said first and second pinion shafts". This language recites structure that was not recited in the originally presented claim 11; the language, thus, further narrowing the limitations of the originally presented claim 11. For example, the recitation "first ball bearings arranged between said intermediate shaft and of said first and second pinion shafts" further narrowed the limitation ball bearings and its arrangement. Thus, the amendment to independent claim 1 filed on March 27th, 2008 changed the scope of the claim, causing the claim to be read in a different light. As a result, further search was required by the Examiner. At least for this reason, the new grounds of rejection and the Finality of the Office Action filed on July 2nd, 2008 are proper and are maintained by the Examiner. .